XI-HC—78

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

A2

मामला क्रमांक G.A.978/94 सन् ~~200~~

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अंतिम आदेश

APPELLANT:
(In Jail)

Moolchand, S/o Rajau Sahu,
Aged about 32 years,
R/o Village: Bihavbod,
Police Station: Ghumka,
Tehsil & Distt.: Rajnandgaon (C.G.)

- Versus -

RESPONDENT:

State of Chhattisgarh,
Through Police Station: Ghumka,
Tehsil & Distt.: Rajnandgaon (C.G.)

{Criminal appeal under Section 374 (2) of the Code of the Criminal Procedure, 1973}

Division Bench:

Hon'ble Mr. L.C. Bhadoo and
Hon'ble Mr. Dhirendra Mishra, JJ.

17-7-2007

Mr. Abhay Tiwari, counsel for the appellant.

Mr. Ashish Shukla, Additional Public Prosecutor for the State/ respondent.

Oral judgment dictated on Dais.

L.C. Bhadoo, J: -

This appeal is directed against the judgment of conviction and order of sentence dated 24th December, 1993, passed by the 1st Additional Sessions Judge, Rajnandgaon in Sessions Trial No.3/93, whereby learned Additional Sessions Judge after holding the accused/appellant guilty for commission of offence under Section 302 of the I.P.C. for committing the murder of Gendibai, sentenced him to undergo imprisonment for life.

43
2

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

मामला क्रमांक Cr.A. 978/94 सन् 200

आदेश पत्रक (पूर्वानुबद्ध)

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Case of the prosecution, in brief, is that on 28-7-1992 she-calf of Gendibai entered the kitchen garden of accused/appellant Moolchand and was damaging the crop, therefore, the accused brought a club from his house, started abusing his brother Krishna Kumar, husband of Gendibai, and assaulted Krishna Kumar with the club. On seeing this, the wife of Krishna Kumar namely, Gendibai (since deceased) came to intervene and asked the accused as to why he is attacking her husband. On hearing this, the accused attacked Gendibai with club on her head 2-3 times as a result of which Gendibai sustained fatal injuries on head, she became unconscious and succumbed to the injuries sustained by her, within an hour.

The matter was reported by Bahur Das, Kotwar, under Ex.P-3 on 28-7-1992 at about 8.30 p.m. in Police Station: Ghumka where Assistant Sub Inspector R.P. Tiwari (PW-10) registered the offence and left for the scene of occurrence. He prepared inquest Ex.P-4 on the body of Gendibai. Under Ex.P-5, he seized blood stained soil, plain soil and broken pieces of bangle. Saree of Gendibai was seized under Ex.P-6. The accused gave memorandum Ex.P-7 in police custody regarding the place where he kept the club, weapon of offence, the same was seized under Ex.P-8, at the instance of the accused. Blood stained shirt of the accused was seized under Ex.P-9. Viscera of Gendibai were seized under Ex.P-10. Body of Gendibai was sent for post-mortem examination under Ex.P-16 to District Hospital, Rajnandgaon, where Dr. G.L. Chandrakar (PW-11) conducted post-mortem, prepared report Ex.P-19 and opined that cause of death is due to head injury because of fracture, skull & intracerebral haemorrhage which leads to damage of brain matter.

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

मामला क्रमांक G.A.978/94 सन् ~~200~~

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After completion of investigation, charge sheet was filed in the Court of Judicial Magistrate, First Class, Rajnandgaon, who in turn committed the case to the Sessions Judge, Rajnandgaon, from where learned 1st Additional Sessions Judge, Rajnandgoan, received the case on transfer for trial.

The prosecution in order to establish charge against the accused examined 13 witnesses. Statement of the accused was recorded under Section 313 of the Cr.P.C. in which he denied the material appearing against him in the prosecution case and stated that he has been falsely implicated in the crime. He examined one witness namely, Sarju in his defence.

Learned Additional Sessions Judge after hearing counsel for respective parties, convicted and sentenced the accused as aforementioned.

We have heard Mr. Abhay Tiwari, learned counsel for the appellant and Mr. Ashish Shukla, learned Additional Public Prosecutor on behalf of the State/respondent.

Mr. Abhay Tiwari has not disputed the homicidal death of Gendibai. Moreover, Ramdayal (PW-7) has stated in his evidence that the accused attacked the deceased with club on her head 2-4 times in his presence. Dr. G.L. Chandrakar (PW-11) has stated in his evidence that on 29-7-1992, he was working as Assistant Surgeon in District Hospital, Rajnandgaon, on that day, the body of Gendibai was brought for post-mortem examination, he conducted post-mortem and found that there were two injuries on occipital & parietal regions in the size of 5 x 4 x bone deep & 4 x 2 x bone deep, respectively, which were lacerated in nature, skull bone was fractured, clotted blood was present between bone and brain, cause of death was fracture of skull bone and injuries on brain, injuries were ante-mortem in

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

मामला क्रमांक CR.A. 978/94 सन् 200

आदेश पत्रक (पूर्वानुबद्ध)

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nature and his report is Ex.P-19. In view of the above ocular and medical evidence, it is established that the death of Gendibai was homicidal in nature.

As far as involvement of the accused/appellant in the crime in question is concerned, Krishna Kumar (PW-6) is brother of the accused and husband of the deceased. He has stated in his evidence that on the date of incident i.e. 28-7-1992, the accused/appellant who is his elder brother, Raj Kumar, another brother and he himself were residing at Village: Bihavbod, now he is residing at Navagaon, his house was adjoining to the house of Moolchand, the accused/appellant, the land was already partitioned one and half months prior to the date of incident, he was working with one Patel, he used to go to Patel's house for work at 6 a.m. and return at about 12 noon for taking lunch, on the fateful day he returned from the house of Patel at about 9 a.m., Thagia Bai, his sister-in-law, came to inform him that she-calf has entered the kitchen garden and Moolchand is quarrelling with Gendibai. On hearing this, he was going towards his house, on the way Moolchand met him, he asked Moolchand as to why he is quarrelling, what happened if the animal has entered his kitchen garden. On this, the accused attacked on his head with Lathi, he became unconscious and fell down. When he regained consciousness, he was in the hospital.

Ramdayal (PW-7) has stated in his evidence that on the fateful day at about 8-9 a.m. he was in the village, at that time, he saw that Krishna Kumar was returning from the house of his master. Accused Moolchand informed him (PW-7) that the calf has entered his kitchen garden and Gendibai was taking that calf. The accused was carrying club in his hand, he attacked Krishna Kumar with club, in the mean time, Gendibai came and tried to intervene, Moolchand attacked her also with club 2-4 times as a result of

(46)

मामला क्रमांक ..... Cr.A. 978/94 ..... सन् 200

आदेश पत्रक (पूर्वानुबद्ध)

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which Krishna Kumar & Gendibai both fell down on the ground, thereafter, he went to inform Baratu Patel & Bahur Das, Kotwar.

This witness (PW-7) is an independent witness and nothing has been brought in his cross-examination to discredit his evidence. To a certain extent, the evidence of this witness is corroborated by the evidence of Krishna Kumar (PW-6), injured & Bahur Das (PW-2) to whom Ramdayal (PW-7) who reached on the spot and saw Gendibai & Krishna Kumar in injured condition, informed about the incident. The accused also made extra judicial confession before Barat Ram (PW-3) that he attacked Krishna Kumar & Gendibai. Therefore, from the above ocular and circumstantial evidence, involvement of the accused in attacking Gendibai with club is established.

Mr. Abhay Tiwari, learned counsel for the appellant, argued that the deceased is wife of real brother of the accused and quarrel started on a trivial matter that she-calf of his brother Krishna Kumar, whose wife Gendibai was attacked by the accused, entered the kitchen garden of the accused and damaged the kitchen garden which enraged the accused, therefore, when he attacked his brother in a heat of passion, in between, Gendibai came and the accused attacked her also. When he was attacking Krishna Kumar, Gendibai abused the accused, therefore, the accused attacked her also and in that process in a heat of passion, all of a sudden without any preparation and premeditation, the accused attacked the deceased which proved fatal. Therefore, there was no intention of the accused to cause the death of his sister-in-law, as there was no previous animosity between the two. In the circumstances, offence against the accused does not travel beyond Section 304 Part-II of the I.P.C.

47

मामला क्रमांक CRA 978/94 सन् 200

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अंतिम आदेश

On the other hand, Mr. Ashish Shukla, learned Additional Public Prosecutor, supported the judgment of the trial Court.

In order to appreciate the argument advanced by learned counsel for the appellant, we have perused the evidence. It is admitted position that deceased Gendibai is wife of real brother of the accused, on the fateful day, she-calf of Krishna Kumar – brother of the accused entered the kitchen garden of the accused and damaged the crop, at that time, Krishna Kumar was returning to his house from his master's house and the accused asked Krishna Kumar on which he replied that what happened if the calf has damaged the crop, on which the accused attacked Krishna Kumar and in the mean time, Gendibai appeared on the scene and the accused attacked her also.

Ramdayal (PW-7) has stated in para 3 of his evidence that Moolchand informed him that she-calf of Krishna Kumar has damaged his crop, Gendibai is abusing him, in the mean time, Krishna Kumar came and the accused attacked him, thereafter, Gendibai came to whom also the accused attacked.

From the above facts it emerges that the quarrel started on trivial matter that she-calf of Krishna Kumar & Gendibai entered the kitchen garden of the accused. The accused asked Krishna Kumar that his calf has damaged the crop of kitchen garden. As per the evidence of Ramdayal (PW-7) when the accused asked Gendibai, she was abusing him and in that process the accused in the first instance, attacked Krishna Kumar and Gendibai came, he attacked her also with Lathi. There was no previous animosity between the two brothers and the accused attacked in a heat of passion without any preparation and premeditation all of a sudden. Therefore, case of the accused comes under Exception 4 to Section 300 of

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

(48) 7

मामला क्रमांक C.A. 978/94 सन् 200

आदेश पत्रक (पूर्वानुबद्ध)

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the I.P.C. because from the facts it cannot be inferred that the accused had intention to cause the death of his sister-in-law. Accordingly, conviction and sentence imposed upon the accused under Section 302 of the I.P.C. cannot be sustained.

In the result, the appeal partly succeeds. Conviction and sentence imposed upon the accused/appellant under Section 302 of the I.P.C. are set aside, instead thereof, he is convicted under Section 304 Part-II of the I.P.C. and sentenced to undergo R.I. for ten years. It is stated that the accused in the first spell was in detention from 29-7-1992 to 22-1-2003 and thereafter, he is in detention since 25th June, 2006, which has not been disputed by Mr. Ashish Shukla, learned Additional Public Prosecutor. Therefore, the accused has already undergone the sentence imposed upon him, as such, he be set at liberty forthwith, if not required in any other case.

Sd/-
L.C.BHADOO
Judge

Sd/-
Dhirendra Mishra
Judge

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